

## CHAPTER 19. RESIDENTIAL RENT INCREASE DISPUTE RESOLUTION

### Section 3-1900. Citation.

This chapter may be referred to as the "Residential Rent Increase Dispute Resolution Ordinance" (RRIDRO) of the City of Fremont.

### Section 3-1905. Definitions.

(a) Base rent shall mean the rental amount required to be paid by the tenant to the landlord in the month immediately preceding the effective date of the rent increase.

(b) Designated service provider or service provider shall mean a party or organization contracted by the city to provide needed services to implement the procedures contained in this chapter.

(c) Director shall mean a person designated by the city manager. Any duty required of the director may be delegated to a third party by the director and any service required to be performed by the director may be provided by a designated service provider as authorized by the director.

(d) Fact finding panel shall mean a panel of three persons, as described in subsection 3-1835(c), selected and qualified by the director to review and evaluate the results of a specific conciliation and mediation proceeding and to make a specific recommendation for the terms of an agreement between the parties to resolve a rent increase dispute.

(e) Landlord shall mean any person, partnership, corporation, or other business entity offering for rent or lease any residential property in the city. Landlord shall include the agent or representative of the landlord.

(f) Participate in good faith shall mean the mutual obligation of the landlord and tenant to meet on each occasion when notified in conciliation/mediation/fact finding proceedings, provide relevant information, exchange proposals, reasonably consider proposals by opposite parties and engage in meaningful discussion on the subject of proposed rent increases and issues related to the rent increase. Good faith participation includes the duty of the landlord to refrain from any unlawful detainer proceeding due solely to a withholding of rent while the parties are engaged in proceedings under this chapter.

(g) Party shall mean a person who participates in the dispute resolution procedures of this chapter or their agent or representative.

(h) Rent shall mean a fixed periodic compensation paid by a tenant at fixed intervals to a landlord for the possession and use of property.

(i) Rent increase shall mean any upward adjustment of the base rent amount specified by the original contract.

(j) Residential property shall mean any housing unit offered for rent or lease in the city consisting of one or more units whether attached or detached, single or multiple-family, and mobile homes. Mobile homes are subject to this chapter only to the extent of the mobile housing unit itself, not the underlying real property pad.

(k) Responsible party shall mean the person with the legal authority to adjust rent increases and resolve tenant disputes on behalf of the residential landlord. Responsible party shall include the agent or representative of the responsible party.

(l) Responsible party declaration shall contain the signature of the legal owner of the residential property certifying that the person authorized to represent him/her during conciliation, mediation, or fact finding has the authority to adjust rent increases and resolve tenant disputes on behalf of the residential landlord.

(m) Retaliatory conduct means those acts prohibited by California Civil Code Section 1942.5 and subsection 3-1945(a) below.

(n) Tenant shall mean any person having the legal responsibility for the payment of rent for residential property in the city. Tenant shall include the agent or representative of the tenant.

Section 3-1910. Notice of rent increase required; invalidity for failure to provide proper notice.

(a) Every landlord of residential property shall provide a legally sufficient rent increase notice as prescribed in this chapter before demanding or accepting any increase in rent.

(b) Any rent increase accomplished in violation of this chapter shall be void and no landlord may take any action to enforce such an invalid rent increase.

(c) Any rent increase in violation of this chapter shall operate as a complete defense to an unlawful detainer action based on failure to pay any illegal rent increase. Any tenant required to pay an illegal rent increase may recover all illegal rent increase amounts, actually paid by the tenant, in a civil action.

(d) Unless otherwise agreed by the parties in writing, rent increases shall be limited to one increase in any consecutive twelve-month period.

Section 3-1915. Requirements for rent increase notice.

(a) Landlord shall provide all tenants moving in after July 1, 2001, with a notice informing the tenants about the existence of the city's rent increase dispute resolution as provided in this chapter and that they can receive a copy of the chapter by contacting the city's office of neighborhoods at (510) 494-4500. Prior to any rent increase, every landlord shall provide their

tenants a notice of rent increase as prescribed in this chapter. This obligation shall extend to rent increases in any amount and to all affected tenants. No rent increase shall be valid for any purpose whatsoever without full compliance with this section.

(b) All rent increase notices shall be in writing, shall show the name, address and phone number of the responsible party and shall be personally delivered to the tenant or posted and mailed to the tenant at the address of the tenant's rental unit by first class mail, postage prepaid. Service by mail shall be presumed complete within five calendar days of mailing. This presumption may be rebutted by the tenant.

(c) It is the intent of this chapter that all landlords be encouraged to provide at least ninety calendar days notice of any rent increase in order to allow for orderly operation of the dispute resolution procedures of this chapter. At a minimum all rent increases shall meet the notice requirements of state law.

(d) In addition to all other information provided in a rent increase notice, each notice of rent increase shall state in bold type:

NOTICE: You are encouraged to contact the (landlord to insert the name of the Responsible Party), \_\_\_\_\_ at (area code) \_\_\_\_\_ to discuss this rent increase for your rental unit. However, chapter 19 of Title III of the Fremont Municipal Code provides a procedure for conciliation, mediation and fact finding for disputes over rent increases. To use the procedure and secure additional information about the city ordinance, you must contact (landlords will be advised of the name and phone number of the service provider designated by the director that is to be inserted in this notice) within fifteen days following receipt of this notice.

### Section 3-1920. Residential rent increase dispute resolution obligation.

(a) Each tenant and each landlord shall have the opportunity to conciliate, mediate and have fact finding of all rent increases on any residential rental unit in the city.

(b) Rent dispute resolution procedures shall consist of three steps: conciliation with a third party; mediation with a neutral third party; and fact finding by a fact finding panel.

(c) The rent dispute resolution process shall be initiated by either an affected landlord or an affected tenant contacting the designated service provider and requesting assistance with a rent increase within fifteen calendar days after the tenant receives, or is presumed to have received, the notice of rent increase.

(d) The designated service provider (DSP) shall process requests for assistance as follows:

(1) When a party requests information only the DSP shall provide the RRIDRO information brochure to all parties in person or by mail, as may be appropriate, within one business day.

(2) A party requesting assistance in use of the RRIDRO process shall be encouraged by the DSP to contact the opposite party to attempt resolution of the rent increase dispute. When such a request is made by a party, the requester and all other parties shall be provided the RRIDRO information brochure in person or by mail, as may be appropriate, and the DSP shall notify the opposite party by phone within three business days that a request for assistance has been made.

(3) When a requesting party does not wish to contact the opposite party the designated service provider (DSP) shall record the request for assistance, initiate conciliation service, and shall give written notice to the affected parties within three business days.

(e) The director is authorized, to the extent consistent with all the time limits and procedures in this chapter, to consolidate separate requests for conciliation, mediation and fact finding involving the same rent dispute issue. Consolidation shall not affect individuals' desire to be separately represented or to bring a separate legal action.

(f) In the event the parties do not reach written agreement resolving a rent increase dispute, the director is authorized and shall have the duty to determine when proceedings under this chapter have been completed and to notify the parties of the termination of proceedings under this chapter.

#### Section 3-1925. Conciliation procedures.

(a) The affected landlord or tenant shall respond either orally or in writing to the designated service provider within two business days following phone contact. Failure of a responsible party to respond to the designated service provider within two business days shall void the rent increase notice for all purposes.

(b) The director shall attempt informal conciliation of the rent increase for a period not exceeding ten business days.

(c) The responsible party and the tenant shall have the mutual obligation to participate in the conciliation process in good faith.

(d) Any agreement reached by the parties in conciliation shall:

(1) Be made in writing and signed by the parties to the agreement;

(2) State the specific terms of the agreement including the duration and conditions of the agreement;

(3) Be binding on the parties identified in the agreement;

(4) Provide that the parties agree to binding arbitration by a city-appointed arbitrator to resolve any future dispute as to the interpretation or application of the agreement; and

(5) Provide that any agent or representative signing a conciliation agreement on behalf of other persons shall be responsible for promptly providing a copy of the agreement to the parties he or she represents.

(e) A party to a conciliation agreement may not initiate a rent dispute resolution procedure concerning any rent increase covering the same time period included in the conciliation agreement.

(f) One or more tenants affected by a common rent increase may simultaneously participate in the same conciliation proceeding with consent of the landlord. No tenant shall be bound by any conciliation agreement they or their agent and/or representative did not agree to.

(g) Failure of a responsible party to appear and participate in good faith in the conciliation process shall void the notice of rent increase for all purposes. Failure of any affected tenant to appear and participate in good faith shall terminate all services under this chapter for the affected tenant for the duration of the subject rent increase and shall make the rent increase effective the date stated in the notice of rent increase.

(h) In the event the rent increase is not resolved to the satisfaction of either party in the conciliation process, the director or designated service provider shall refer the matter to a third party neutral mediator or mediators for formal mediation proceedings upon the request of either party. The director shall develop guidelines to implement the mediation process.

Section 3-1930. Mediation procedures.

(a) The designated mediator shall give phone notice of the initial mediation meeting to each party to the mediation within two business days following referral of the matter for mediation. The phone notice of the mediation meeting shall inform each party of their obligation to appear at the mediation and participate in the mediation in good faith. "Referral" shall mean the day mediation services [the designated service provider] assigns the matter to a mediator.

(b) Any agreement reached by the parties in mediation shall:

(1) Be made in writing and signed by the parties;

(2) State the specific terms of the agreement including the duration and conditions of the agreement;

(3) Be binding on the parties to the agreement;

(4) Provide that the parties agree to binding arbitration by a city-appointed arbitrator to resolve any future dispute as to the interpretation or application of the agreement; and

(5) Provide that any agent or representative signing a mediation agreement on behalf of other persons shall be responsible for promptly providing a copy of the agreement to the parties she/he represents.

(c) A tenant bound by a mediation agreement may not initiate a rent dispute resolution procedure concerning any rent increase covering the same time period included in the conciliation agreement.

(d) One or more tenants affected by a common rent increase may simultaneously participate in the same mediation proceeding with the consent of the landlord.

(e) Failure of a responsible party to appear and participate in good faith in the mediation process shall void the notice of rent increase for all purposes. Failure of any affected tenant to appear and participate in good faith shall terminate all services under this chapter for the affected tenant for the duration of the subject rent increase and shall make the rent increase effective the date stated in the notice of rent increase.

(f) Formal mediation proceedings under this section shall not exceed thirty calendar days unless agreed to by the parties.

#### Section 3-1935. Fact finding procedures.

(a) Following completion of the mediation procedures, either party may request fact finding.

(b) A request for fact finding shall be made to the director within five business days after completion of mediation.

(c) The director shall designate a fact finding panel and notify the parties within ten business days. The panel shall be composed of three persons, who are non-parties, with one landlord representative, one tenant representative and one neutral fact finder.

(d) The director is authorized to create a fact finding panel pool composed of up to fifteen persons. The pool shall be evenly divided between persons representing landlord interests, tenant interests and neutral third parties experienced in fact finding procedures.

(e) Within ten days the fact finding panel shall gather all relevant information from the mediator and the parties.

(f) In the discretion of the fact finding panel, a hearing may be convened. The director shall provide notice to the parties and witnesses at the direction of the fact finding panel. Participants in the hearing shall be the parties to the mediation and other persons deemed necessary by the fact finding panel.

(g) The purpose of the hearing shall be to allow the fact finding panel to examine witnesses, review the documents in the record and make formal findings of fact and a recommendation to resolve the rent dispute. In the discretion of the panel any hearing that is convened may be continued for the convenience of a party. The panel may proceed with a hearing in the absence of a party.

(h) The duty of the fact finder shall be to determine the reasonableness of the rent increase and the impact of the rent increase on the affected household. The landlord shall carry the burden of persuasion in the fact finding proceeding to justify the rent increase. The fact finding panel shall consider all the following factors as a whole, but not individually:

(1) All increases or decreases since the last rent increase in amortized capital improvements, maintenance or operating costs, costs of debt service, rehabilitation costs and provision of housing services;

(2) Existing market value of rents for similarly situated units;

(3) Return on investment to the landlord; and

(4) The San Francisco Oakland San Jose All Urban Consumer Price Index.

These factors are illustrative and not exclusive. The fact finder is free to consider all factors relevant to the issue of the reasonableness of the rent increase as between the parties.

(i) The director shall exercise diligence in drafting the findings and recommendations of the fact finding panel and shall mail the findings and recommendation to the parties within five business days following completion.

(j) Any agreement reached by the parties to accept the recommendations of the fact finding panel shall:

(1) Be made in writing and signed by the parties;

(2) State the specific terms of the agreement including the duration and conditions of the agreement;

(3) Be binding on the parties; and

(4) Provide that the parties agree to binding arbitration by a city-appointed arbitrator to resolve any future disputes as to the interpretation or application of the agreement.

(k) One or more tenants affected by a common rent increase may simultaneously participate in the same fact finding proceeding with the consent of the landlord.

(l) Failure of a responsible party to appear and participate in good faith in the fact finding process shall void the notice of rent increase for all purposes. Failure of any tenant to appear and participate in good faith in the fact finding process shall terminate all services under this chapter for the affected tenant for the duration of the subject rent increase and shall make the rent increase effective the date stated in the notice of rent increase.

(m) The fact finding process shall be completed within twenty days after the fact finding panel is designated by the director. The fact finding process shall be extended for any period of time agreed in writing by the parties.

(n) The recommendations of the panel shall not be binding on any party unless agreed to by both parties in writing.

Section 3-1940.      Rent increase deposit obligation.

- (a) Every tenant shall pay the existing base rent as it becomes due.
- (b) In the event the conciliation/mediation/fact finding process exceeds the rent increase notice period, each affected tenant shall deposit with the landlord fifty percent of the rent increase amount, as it becomes due, in the customary form practiced by the landlord and tenant or in any agreed form. The landlord shall retain this deposit in the landlord's security deposit account. "Fifty percent of the rent increase amount" shall mean fifty percent of the amount which exceeds the existing base rent. The landlord shall provide the tenant with a receipt acknowledging the delivery of the deposit and agreeing to relinquish the deposit if required by this chapter.
- (c) In the event the parties reach an agreement pursuant to this chapter reducing the amount of the proposed rent increase:
  - (1) The landlord shall immediately return to the tenant the difference between the agreed rent increase and the deposit if the deposit exceeds the amount of the agreed rent increase.
  - (2) The tenant shall immediately pay to the landlord the balance of the rent increase amount if the agreed rent increase exceeds the deposit amount.
  - (3) All payments shall be in the customary form practiced by the landlord and tenant or in any agreed form.
- (d) If the parties fail to reach any agreement the landlord shall retain the full amount of the deposit and the tenant shall pay the full balance of the rent increase amount immediately following notice by the director.
- (e) If a good faith determination is made adverse to the landlord the full amount of the rent increase deposit shall be released to the tenant within thirty days following the final good faith determination.
- (f) If a good faith determination is made adverse to the tenant the full amount of the rent increase deposit shall be retained by the landlord and the remaining balance of the rent increase amount shall be paid by the tenant to the landlord within thirty days following the final good faith determination and notification by the director.
- (g) A tenant failing to make an rent increase amount deposit when due shall be deemed in breach of the obligation of good faith participation and shall incur the consequences provided in this chapter.
- (h) In the event the landlord fails to retain any deposit in the security deposit account, the rent increase shall be void for all purposes and the landlord shall be liable to the tenant in a civil action for the amount of the deposit.



Section 3-1945.      Landlord retaliation prohibited.

(a) No landlord may take any action increasing any rental amount, reducing any service, causing the tenant to involuntarily quit the premises (constructive eviction) or discriminating against any tenant or household members of a tenant because of the tenant's use of any remedy provided by this chapter.

(b) Adverse retaliatory actions suffered by a tenant within sixty days of the tenant's exercise of any right or process under this chapter shall be presumed to be retaliatory conduct under this chapter. This presumption may be rebutted by the landlord in which case the landlord shall carry the burden of persuasion to prove the adverse action was not in retaliation for the exercise of any right or process under this chapter.

(c) Retaliatory conduct by a landlord in violation of this section shall be void and shall be remedied by a civil penalty up to one thousand dollars as may be prescribed by the city council and enforced by the director.

(d) Any rent increase in violation of this section shall be void and shall be rolled back to the prior rental amount.

(e) Retaliatory conduct by a landlord in violation of this section shall be a defense to an unlawful detainer or eviction action.

Section 3-1950.      Authority of conciliator, mediator and fact finder.

(a) Any party to a rental dispute may request the director to investigate a claim of failure to participate in good faith by another party to a dispute. The director shall be responsible for investigation of allegations of a lack of good faith participation by any party. The director may not delegate this duty to a person other than a city employee. The director may not use information from a conciliator, mediator or fact finding panel member for the purposes of any such investigation.

(b) Any determination that a party has failed to participate in good faith in a proceeding under this chapter shall only be made after a five business day notice of hearing to all affected parties, a fair hearing by a hearing officer appointed by the city manager and the rendition of factual findings supported by the record. Following the fair hearing the director shall give prompt notice of the good faith determination by first class mail postage pre-paid to the affected party.

Section 3-1955.      Arbitration remedy.

In the event a dispute arises over the application or interpretation of any written agreement resulting from the procedures of this chapter, the director shall designate a neutral

arbitrator to hear and render a binding decision on any such dispute and to make an award based on the evidence presented.